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Small Firm Prevails with DIY Predictive Coding

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Bassi Edlin Huie & Blum, a 25-lawyer firm, had its hands full with an environmental case for the city of Fort Bragg, Calif. Proving the city was not responsible for the damage wreaked by a 120-year-old lumber mill meant combing through a staggering 11 million pages of records.

Their adversary, Georgia-Pacific LLC, was represented by 700-lawyer Hunton & Williams.

The task spurred Bassi Edlin to turn to a low-cost predictive coding solution. Managing partner Noel Edlin said the technology levelled the playing field by allowing his firm to match its deep-pocketed opponents at a much lower cost.

In an age when discovery loads reach into the tens of millions of pages, affordable for-purchase predictive coding systems can be a big help for small firms. But some say doing it yourself can be risky.

Edlin said the firm figured investing in an in-house technology was much cheaper, in both the short term and as a long-term investment. Rather than the $200,000 to $300,000 they might have paid a vendor, Edlin said the firm purchased an off-the-shelf system for about $22,000.

Bringing the system in-house meant the firm's employees had to run it. Two staffers spent two and a half weeks reviewing a "seed set" of documents to train the system to recognize relevant items, lead attorney Fred Blum explained. Then the system ran through the remaining pages in the course of a few days and flagged 3 million or 4 million documents for a traditional eyeball review.

"You have to have somebody that's committed to learning the product," said Tim Leehealey, the CEO of AccessData, which sells the technology Bassi Edlin used.

Bassi Edlin's client covered some of the cost of the software and employee time. Meanwhile, Bassi Edlin's opposing counsel at Hunton & Williams outsourced its predictive coding e-discovery work to Kroll OnTrack, Blum said.

NOEL EDLIN AND VIVY DANG, BASSI EDLIN HUIE & BLUM

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E-discovery expert Craig Ball compares predictive coding to how someone with no knowledge of Chinese might study Chinese texts. Even if you had no idea what the characters meant, you could identify patterns and repeated symbols. Predictive coding software can find documents that are similar to the relevant "seed set" documents, though it has no idea what the words mean. But it isn't perfect.

Predictive coding users measure their confidence in the technology by comparing a human-filtered set to the computer's filter of the same set. Bassi Edlin's system produced a set about 80 percent to 85 percent similar to the human work.

This confidence level is a bit low, Ball said, noting that other firms often have confidence levels in the 90s. But there is no set "industry standard" for confidence levels, e-discovery expert Daniel Garrie said, noting that legal teams have run these systems with confidence levels in the range of 75 percent to 95 percent. The necessary threshold, he said, varies enormously with the matter and the type of data.

It worked for Bassi Edlin. Predictive coding helped the firm's lawyers find documents that gave rise to counterclaims against Georgia-Pacific, Edlin said, and ultimately enabled them to negotiate a settlement last month that left the city with no liability. Still, Ball said running a predictive coding technology with internal hires is taking a gamble.

"That's just a really risky thing to do. We're talking about a complex tool, that, in order for it to work well, needs to be implemented in a very deliberate and intelligent way," Ball said, cautioning firms that might be attracted to the cost savings of such a system. "Just trying to buy the hammer and build the house yourself is troubling."

But if the situation is right, an in-house predictive coding system can cut costs and help small firms compete.

"You can basically remove the need to have hundreds of associates," Garrie said. "You get to focus on real litigation and real law."

The firm is using the system in a quarter of its cases, Edlin said.

"I was always very wary of predictive coding. But I've become a proponent of it—once you understand what it can and cannot do," Blum said.